

STATE OF MICHIGAN
COURT OF APPEALS

ESTATE OF RICHARD E. SMITT, DECEASED,

Plaintiff/Counter-Defendant-
Appellee,

V

CRAIG R. LUEDKE,

Defendant/Counter-Plaintiff-
Appellant.

UNPUBLISHED

July 22, 2003

No. 239201

Oakland Circuit Court

LC No. 01-036159-CZ

Before: Wilder, P.J., and Griffin and Gage, JJ.

PER CURIAM.

Defendant appeals by right from an order confirming the arbitration award. Defendant failed to meet the closing date specified by a purchase agreement. An arbitration panel determined that defendant was liable in the amount of \$477,788, minus a credit for the \$317,500 earnest money deposit that was forfeited. The circuit court confirmed the arbitration award. We affirm.

First, defendant argues the decision to confirm the arbitration award should be vacated or modified because the arbitrators exceeded their authority, and the trial court failed to look beyond the face of the arbitration award to the record of the proceedings in order to determine whether the evidence substantiated the award. Review of arbitration awards by circuit courts is limited to cases where there is an error of law apparent on the face of the award, or from the terms of the contract of submission, or from such documentation as the parties have agreed constitutes the record. *Dohanyos v Detrex Corp (After Remand)*, 217 Mich App 171, 175-176; 550 NW2d 608 (1996).

An arbitrator's authority is derived from the underlying contract. *Gogebic Med Facility v Local 992*, 209 Mich App 682, 696-697; 531 NW2d 728 (1995). On examining the purchase agreement the trial court determined: (1) there was an arbitration clause in the purchase agreement contract, (2) that the arbitration clause clearly encompassed the disputed issue because it gave the arbitrators authority to hear any claim or controversy relating to the contract, and (3) there was no clause limiting the arbitrators' authority.

Once an issue is submitted to arbitration, judicial review is limited by the Uniform Arbitration Act, MCL 600.5001 *et seq.*, and MCR 3.602. *DAIIE v Gavin*, 416 Mich 407, 429;

331 NW2d 418 (1982). MCR 3.602(J)(1) provides that a court may vacate an arbitration award if (1) the award was a result of fraud, corruption or other unlawful means; or (2) an arbitrator obviously favored one side over the other, or was corrupted, or during the arbitration there was misconduct that prejudiced a party's rights; or (3) the arbitrators exceeded their powers; or (4) the arbitrators conducted the hearings in a manner that substantially prejudiced a party's rights by refusing to postpone a hearing after a showing of just cause, or refusing to hear material evidence to the controversy. An arbitration award will be vacated on the ground that an arbitrator exceeded his powers through an error of law, only when it clearly appears on the face of the award or in the reasons for the decision that the arbitrator was led to the wrong conclusion because of the error of law. *Dohanyos, supra* at 176. The award will be vacated when, but for that error, the award would have been substantially different. *Id.* Here, the face of the arbitration award contains no reasons for the arbitrators' decision. The circuit court determined defendant was asking it to review the arbitration award de novo, a review that is precluded. *Gordon Sel-Way, Inc v Spence Bros, Inc*, 438 Mich 488, 495; 475 NW2d 704 (1991). Thus, we find no error by the circuit court.

Defendant next argues the arbitration panel exceeded its powers and rendered an award contrary to controlling principles of law. Defendant asserts that because he failed to satisfy the condition precedent of obtaining a mortgage commitment, no valid contract existed. We disagree. "[A]n allegation that the arbitrators have exceeded their powers must be carefully evaluated in order to assure that [the] claim is not used as a ruse to induce the court to review the merits of the arbitrators' decision." *Gordon Sel-Way, supra* at 497. In other words, "courts may not substitute their judgment for that of the arbitrators and hence are reluctant to vacate or modify an award when the arbitration agreement does not expressly limit the arbitrators' power in some way." *Id.* The Michigan statutory scheme permits trial courts to only modify, vacate or correct arbitration awards, and leaves all questions regarding contract interpretation to the arbitrator when the parties have selected binding statutory arbitration. *Brucker v McKinlay Transport, Inc*, 454 Mich 8, 17-18; 557 NW2d 536 (1997).

Defendant claims the arbitrators erred in interpreting the mortgage contingency clause in the purchase agreement. However, this claimed error is based on the interpretation of the parties' agreement, which is a question for the arbitrator and is dependent on the arbitrator's factual findings. *Konal v Forlini*, 235 Mich App 69, 74; 596 NW2d 630 (1999). "The standard articulated in *Gavin* limits judicial review of alleged errors of law in arbitration decisions to those which appear on the face of the award." *Donegan v Mich Mutual Ins Co*, 151 Mich App 540, 549; 391 NW2d 403 (1986), quoting *Gavin, supra* at 443.

The arbitrators' evaluation and weighing of the evidence is not a matter for appellate review. *Belen v Allstate Ins Co*, 173 Mich App 641, 645-646; 434 NW2d 203 (1988). When parties invoke binding arbitration, they are required to follow the applicable statute and court rule. *Dick v Dick*, 210 Mich App 576, 588; 534 NW2d 185 (1995). Interpretation of the mortgage contingency clause was for the arbitrator and not for the court. *Bruckner, supra* at 15; *Konal, supra* at 74. Instead, the proper role of the court is to examine whether the arbitrator rendered an award which is consistent with the terms of this contract. *Gordon Sel-Way, supra* at 496. Here, it is apparent that the arbitrators did not act beyond the material terms of the contract from which their authority was derived because their decision was clearly in accord with the contract giving them authority over any controversy or claim arising out of or relating to the

agreement or a breach thereof. Therefore, the circuit court did not err in affirming plaintiff's arbitration award.

Defendant next argues that the arbitrators committed legal error by rendering an award in plaintiff's favor when plaintiff failed to establish a prima facie case that defendant breached the contract relative to the purchase agreement. The well-settled rule that review of alleged errors in arbitration awards is restricted to those which appear on the face of the award, *Belen, supra* at 645, precludes review of the arbitration award on the basis that it was not supported by substantial evidence. *Id.* Allegations that an arbitrator made factual errors are also beyond the scope of appellate review. *Gordon Sel-Way, supra* at 497.

The arbitration panel did not explain its reasoning in awarding the sum to plaintiff, nor is it required to. *DAIIE, supra* at 102. While there was substantial evidence presented by defendant to support his claim, conflicting evidence was also presented. The arbitrators were not obligated to find for defendant merely because there was evidence before the arbitrator to support a contrary conclusion. *Donegan, supra* at 549. Therefore, the circuit court did not err in confirming the arbitration award because the court was precluded from examining the merits of the claim.

Finally, defendant argues that the circuit court committed legal error in confirming the arbitration award because the arbitrators improperly refused to hear evidence material to the controversy by refusing to allow defendant's expert witness to testify about the effect of the mortgage contingency clause. MCR 3.602(J)(1)(d). However, defendant failed to argue this issue in his brief. Therefore, the defendant abandoned the issue on appeal. *Knoke v East Jackson School Dist*, 201 Mich App 480, 485; 506 NW2d 878 (1993).

Affirmed.

/s/ Kurtis T. Wilder
/s/ Richard Allen Griffin
/s/ Hilda R. Gage